

Service Tax on ocean freight – A deep look
(G. Natarajan, Advocate, Swamy Associates)

The following services were kept in the negative list, when negative list based service tax levy was introduced from 01.07.2012.

services by way of transportation of goods—

(ii) by an aircraft or a vessel from a place outside India up to the customs station of clearance in India;

The above entry has been removed from the negative list, from 01.06.2016.

The following exemption has been introduced in Notification 25/2012 ST Dt. 20.06.2012, vide Notification 9/2016 ST Dt. 01.03.2016 with effect from 01.06.2016.

53. Services by way of transportation of goods by an aircraft from a place outside India upto the customs station of clearance in India.

As a result of the above changes, ocean freight for import consignments upto Indian sea port has become taxable, from 01.06.2016 while air freight for import consignments continue to be exempted.

As a consequence, if the services of a Freight Forwarder / Multimodal Transport operator / Shipping line located in India is availed by an importer in India, service tax would be applicable in the hands of the service provider on the ocean freight received by them. If the service provider is situated outside India, service tax is payable by the Importer, under reverse charge.

But if the foreign consignor, engages a foreign shipping line to transport the goods to an Indian Port, even though the place of provision of such service is India (destination of the goods – Rule 10 of the Place of Provision of Service Rules, 2012) no service tax is payable, as per the following Exemption available under S.No, 34 (c) of Notification 25/2012.

34. Services received from a provider of service located in a non-taxable territory by -

(c) a person located in a non-taxable territory

This seems to have created an anomalous situation whereby if transport is arranged by the Consignor based out of India through a shipping line based outside India, service tax would not be payable, whereas service tax would be applicable under reverse charge, if the Indian importer engages a shipping line based outside India.

In order to set right such anomaly certain amendments have been made vide Notifications 1/2017 ST and 3/2017 ST, dated 21.01.2017, with effect from 22.01.2017. BY virtue of these changes, the representative of the foreign shipping line in India, who files the import manifest was made liable to pay service tax. This has created lots of doubts, such as,

- How to ascertain the value of freight?
- What is the point of taxation to pay service tax?
- Can he collect the service tax from the importer?
- Can the importer avail cenvat credit of such service tax?

In order to address the above issues, Notifications 14 to 16/2017 S.T. Dt. 13.04.2017 and Notification 10/2017 CE NT Dt. 13.04.2017 have been issued. Circular No. 206/4/2017 Dt. 13.04.2017 has also been issued to explain the amendments. The changes introduced vide the above notifications shall come into effect from 23.04.2017, except certain changes which are made retrospectively from 22.01.2017.

Let us try to understand the impact of these notifications.

Notification 14/2017

This notification seeks to introduce a new Rule 8 B in the Point of Taxation Rules, 2011 to prescribe point of taxation for the subject services. This amendment has been made with retrospective effect from 22.01.2017. The said rule lays down the Point of taxation as,

8B. Determination of point of taxation in case of services provided by a person located in non-taxable territory to a person in non-taxable territory.- Notwithstanding anything contained in these rules, the point of taxation in respect of services provided by a person located in non-taxable territory to a person 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, shall be the date of bill of lading of such goods in the vessel at the port of export."

(Does the Government has the power to retrospectively amend these Rules?)

Notification 15/2017

Notification 30/2012 prescribes the various situations in which the service tax is payable by persons other than the service providers (normally service recipients) and the extent to which the same is payable. The said notification has been amended to make the following person as liable for payment of service tax, for the subject services.

Explanation V.- For the purposes of this notification, in respect of 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, person liable for paying service tax other than the service provider shall be the importer as defined under clause (26) of section 2 of the Customs Act, 1962 (52 of 1962) of such goods."

Notification 16/2017.

The person liable for payment of service tax has been changed from the person filing import manifest to the importer, under Rule 2 (1) (d) (i) (EEC) of the Service Tax Rules, 1994.

As introduced by Notification 2/2017 w.e.f. 22.01.2017	Now amended by Notification 13/2017 w.e.f. 23.04.2017
<i>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.</i>	<i>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 importer as defined under clause (26) of section 2 of the Customs Act, 1962 (52 of 1962) of such goods;"</i>

In many situations, the exact amount of freight paid by the foreign exporter to the foreign shipping line would not be known, in case of CIF imports. In such situations, service tax can be paid at 1.4 % of the total CIF value of imports (i.e the total value of imported goods). In addition 0.5 % Swachh Bharat CESS and another 0.5 % Krish Kalyan Cess would also be payable.

Notification 10/2017 CE NT Dt. 13.04.2017

The definition of input service has been amended and the following service is included in the definition, to enable the importer to avail cenvat credit of service tax paid by him in the given circumstances and certain other consequential amendments are also made.

(i) 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 where service tax is paid by the manufacturer or the provider of output service being importer of goods as the person liable for paying service tax for the said taxable services and the said imported goods are his inputs or capital goods.

So far so good.

But the Somalian pirate in the so far peaceful voyage is the following clarification contained in Circular NO. 206/4/2017 Dt.13.04.2017.

*4. It is pertinent to point out here that under notification No. **26/2012-ST** dated 20.06.2012 (Sl. No. 10), there is an exemption on 70% of value of services of transportation of goods in a vessel subject to the fulfillment of the condition that Cenvat credit on inputs and capital goods used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004. This conditional exemption has been extended for the reason that out of the full value of such services, the exempted value of service has already suffered taxes (Central Excise) which would have been available as Cenvat credit to set off service tax on full value of service. In effect, service tax is levied on the value added only. However, in case of foreign shipping lines, their services being exports from their home country, are zero-rated in their home country and thus have suffered no taxes. Further the foreign shipping lines do not get registered in India and do not follow the provisions of Cenvat Credit Rules.*

But how far this clarification is legal. If we look at the relevant entry under S.No.10 of Notification 26/2012 sT Dt. 20.06.2012, it reads as,

In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the said Act), and in supersession of notification number 13/2012-Service Tax, dated the 17th March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 211(E), dated the 17th March, 2012, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the taxable service of the description specified in column (2) of the Table below, from so much of the service tax leviable thereon under section 66B of the said Act, as is in excess of the service tax calculated on a value which is equivalent to a percentage specified in the corresponding entry in column (3) of the said Table, of the amount charged by such service provider for providing the said taxable service, unless specified otherwise, subject to the relevant conditions specified in the corresponding entry in column (4) of the said Table, namely :-

TABLE

Sl.No.	Description of taxable service	Percent-age	Conditions
10	Transport of goods in a vessel	30	CENVAT credit on inputs and capital goods, used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004

The above notification is applicable for “transport of goods in a vessel” without any further qualification. It does not make any distinction based on the location of the service recipient and the service provider. If so, how can the circular bring a non-existent restriction?

Further, the reasoning behind the clarification is also flawed in the context of the decision of the Hon’ble Supreme Court in SRF LTD Vs Commissioner of Customs – 2015 (318) ELT 607 SC.

Had the clarification contained in the circular is true, whoever is directly availing the services of a foreign shipping line (the present amendments are relating to foreign shipping line providing service to foreign exporter) and paying service tax under reverse charge already (from 01.06.2016) would not be entitled for any abatement?

Another goof up.

All the above amendments have been made vide Notifications Nos 14 to 16/2017 and the website of CBEC also contains these notifications. But the CBEC Circular refers to these notifications as 13 to 15/2017 and even taxindiaonline carries the notifications as 13 to 15/2017 and 16/2017 is replica of 13/2017. But already a Notification 13/2017 ST Dt. 13.04.2017 has been issued which deals with format of Settlement Commission application.

Shouldn’t law making, having international implications be little more serious?

[TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY, PART II,
SECTION 3, SUB-SECTION (i)]

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
CENTRAL BOARD OF EXCISE AND CUSTOMS
NEW DELHI

NOTIFICATION NO

1/2017-ST, Dated: January 12, 2017

In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994), the Central Government being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue) No.25/2012-Service Tax, dated the 20th June, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 467 (E), dated the 20th June, 2012, namely:-

In the said notification, in the opening paragraph,-

(i) in entry 29, for item (g), the following item shall be substituted, namely:-

"(g) business facilitator or a business correspondent to a banking company with respect to accounts in its rural area branch."

(ii) in entry 34, for the proviso, the following proviso shall be substituted with effect from 22nd day of January, 2017, namely,-

"Provided that the exemption shall not apply to –

(i) online information and database access or retrieval services received by persons specified in clause (a); or

(ii) services by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India;".

[F.No. 354/42/2016-TRU]

(Anurag Sehgal)
Under Secretary to the Government of India

Note:- The principal notification was published in the Gazette of India, Extraordinary, vide notification No. 25/2012 - Service Tax, dated the 20th June, 2012, vide number G.S.R. 467 (E), dated the 20th June, 2012 and last amended vide notification number 52/2016 - Service Tax, dated the 8th December, 2016 vide number G.S.R. 1122 (E), dated the 8th December, 2016.

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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
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CENTRAL BOARD OF EXCISE AND CUSTOMS
NEW DELHI

CORRIGENDUM

Dated: January 18, 2017

G.S.R. 47(E). - In the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. **1/2017-Service Tax**, dated the 12th January, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 24 (E), dated the 12th January, 2017, at page 2, in line 32, for "*customs station of clearance in India*" read "*customs station of clearance in India received by persons specified in clause (c)*".

[F. No. 354/42/2016-TRU]

(Anurag Sehgal)
Under. Secy.

[TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY, PART II, SECTION 3, SUB-SECTION (i)]

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)
CENTRAL BOARD OF EXCISE AND CUSTOMS
NEW DELHI

NOTIFICATION NO

2/2017-ST, Dated: January 12, 2017

In exercise of the powers conferred by sub-section (1), read with sub-section (2) of section 94 of the Finance Act, 1994 (32 of 1994), the Central Government hereby makes the following rules further to amend the Service Tax Rules, 1994, namely:-

1. (1) These rules may be called the **Service Tax (Amendment) Rules, 2017.**

(2) They shall come into force on the 22nd day of January, 2017.

2. In the Service Tax Rules, 1994, in rule 2, in sub-rule (1),-

(i) in clause (aa), the following proviso shall be inserted, namely:-

"Provided that aggregator shall not include such person who enables a potential customer to connect with persons providing services by way of renting of hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes subject to following conditions, namely:-

(a) the person providing services by way of renting of hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes has a service tax registration under provision of these rules; and

(b) whole of the consideration for services provided by such service provider is received directly by such service provider and no amount, which forms part of the consideration of services of such service provider, is received by the aggregator directly from either recipient of the service or his representative.";

(ii) in clause (d), in sub-clause(i), after item (EEB), the following item shall be inserted, namely:-

"(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;"

[F.No. 354/42/2016-TRU]

(Anurag Sehgal)

Under Secretary to the Government of India

Note:- The principal rules were published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide notification No. 2/94-Service Tax, dated the 28th June, 1994 vide number G.S.R. 546 (E), dated the 28th June, 1994 and last amended vide notification No. 53/2016- Service Tax, dated the 19th December, 2016 vide number G.S.R. 1155 (E), dated the 19th December, 2016.

[TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY, PART II, SECTION 3, SUB-SECTION (i)]

**GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
CENTRAL BOARD OF EXCISE AND CUSTOMS
NEW DELHI**

NOTIFICATION NO

3/2017-ST, Dated: January 12, 2017

In exercise of the powers conferred by sub-section (2) of section 68 of the Finance Act, 1994 (32 of 1994), the Central Government, hereby makes the following further amendments in the notification of the Government of India in

the Ministry of Finance (Department of Revenue) No. 30/2012-Service Tax, dated the 20th June, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 472 (E), dated the 20th June, 2012, namely:-

1. In the said notification,-

(i) in paragraph I, in clause (A), after the sub-clause (vi), the following sub-clause shall be inserted, namely:-

"(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;";

(ii) in paragraph (II), in the Table, after Sl. No. 11 and the entries relating thereto, the following Sl. No. and entries shall be inserted, namely:-

"12.	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	Nil	100%".
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(iii) after Explanation III, following Explanation shall be inserted, namely:-

"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."

2. This notification shall come into force on the 22nd day of January, 2017.

[F.No. 354/42/2016-TRU]

(Anurag Sehgal)
Under Secretary to the Government of India

Note:-The principal notification was published in the Gazette of India, Extraordinary, vide notification No. 30/2012 - Service Tax, dated the 20th June, 2012, vide number G.S.R. 472 (E), dated the 20th June, 2012 and last amended vide notification No. 49/2016-Service Tax, dated the 9th November, 2016 vide number G.S.R. 1058(E), dated the 9th November, 2016.

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**GOVERNMENT OF INDIA
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DEPARTMENT OF REVENUE
CENTRAL BOARD OF EXCISE AND CUSTOMS
NEW DELHI**

NOTIFICATION NO

4/2017-ST, Dated: January 12, 2017

In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue) No.26/2012-Service Tax, dated the 20th June, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 468 (E), dated the 20th June, 2012, namely:-

1. In the said notification, in the first paragraph, in the TABLE, for Sl. No. 11 and the entries relating thereto, the following shall be substituted, namely:-

(1)	(2)	(3)	(4)
"11	Services by a tour operator	60	(i) CENVAT credit on inputs and capital goods used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004. (ii) The bill issued for this purpose indicates that it is inclusive of charges of accommodation and transportation required for such a tour and the amount charged in the bill is the gross amount charged for such a tour including the charges of accommodation and transportation required for such a tour."

2. This notification shall come into force on the 22nd day of January, 2017.

[F.No. 354/42/2016-TRU]

**(Anurag Sehgal)
Under Secretary to the Government of India**

Note:- The principal notification No. 26/2012-Service Tax, dated 20th June, 2012, was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-Section (i) vide number G.S.R. 468 (E), dated the 20th June, 2012 and was last amended by notification No.38/2016- Service Tax, dated the 30th August, 2016, vide G.S.R. 835(E), dated the 30th August, 2016.

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PART II, SECTION 3, SUB-SECTION (i)]**

**GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
CENTRAL BOARD OF EXCISE AND CUSTOMS
NEW DELHI**

NOTIFICATION NO

4/2017-ST, Dated: January 12, 2017

In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue) No.26/2012-Service Tax, dated the 20th June, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 468 (E), dated the 20th June, 2012, namely:-

1. In the said notification, in the first paragraph, in the TABLE, for Sl. No. 11 and the entries relating thereto, the following shall be substituted, namely:-

(1)	(2)	(3)	(4)
"11	Services by a tour operator	60	(i) CENVAT credit on inputs and capital goods used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004. (ii) The bill issued for this purpose indicates that it is inclusive of charges of accommodation and transportation required for such a tour and the amount charged in the bill is the gross amount charged for such a tour including the charges of accommodation and transportation required for such a tour."

2. This notification shall come into force on the 22nd day of January, 2017.

[F.No. 354/42/2016-TRU]

**(Anurag Sehgal)
Under Secretary to the Government of India**

Note:- The principal notification No. 26/2012-Service Tax, dated 20th June, 2012, was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-Section (i) vide number G.S.R. 468 (E), dated the 20th June, 2012 and was last amended by notification No.38/2016- Service Tax, dated the 30th August, 2016, vide G.S.R. 835(E), dated the 30th August, 2016.

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**GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)
NEW DELHI**

NOTIFICATION NO

13/2017-Service Tax, Dated: April 13, 2017

In exercise of the powers conferred by sub-section (1), read with sub-section (2) of section 94 of the Finance Act, 1994 (32 of 1994), the Central Government hereby makes the following rules further to amend the Service Tax Rules, 1994, namely:-

1. (1) These rules may be called the Service Tax (Third Amendment) Rules, 2017.

(2) Save as otherwise provided, they shall come into force on the 23rd day of April, 2017.

2. In the Service Tax Rules, 1994,-

(i) in rule 2, in sub-rule (1), in clause (d), in sub-clause(i), for item (EEC), the following shall be substituted, namely:-

"(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 importer as defined under clause (26) of section 2 of the Customs Act, 1962 (52 of 1962) of such goods;"

(ii) in rule 6,-

(a) after sub-rule (7C), the following sub-rule shall be inserted with effect from 22nd January, 2017, namely :-

"(7CA) The person liable for paying service tax for the taxable 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, shall have the option to pay an amount calculated at the rate of 1.4% of the sum of cost, insurance and freight (CIF) value of such imported goods."

(b) in sub-rule (7D) and (7E), for the brackets, words and figures "(7B) or 7(C)" wherever they occur, the brackets, word and figures "(7B), (7C) or (7CA)" shall be substituted with effect from 22nd January, 2017."

[F. No. 354/42/2016-TRU]

(Mohit Tewari)

Under Secretary to the Government of India

Note:- The principal rules were published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide notification No. 2/94-Service Tax, dated the 28th June, 1994 vide number G.S.R. 546 (E), dated the 28th June, 1994

and last amended vide notification No. 6/2017-Service Tax, dated the 30th January, 2017 vide number G.S.R. 73 (E), dated the 30th January, 2017.

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**GOVERNMENT OF INDIA
MINISTRY OF FINANCE
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CENTRAL BOARD OF EXCISE AND CUSTOMS
NEW DELHI**

NOTIFICATION NO

14/2017-Service Tax, Dated: April 13, 2017

In exercise of the powers conferred under sub-section (2) of section 67A and clause (a) and clause (hhh) of sub-section (2) of section 94 of the Finance Act, 1994 (32 of 1994), the Central Government hereby makes the following rules further to amend the Point of Taxation Rules, 2011, namely:-

1. (1) These rules may be called the Point of Taxation (Amendment) Rules, 2017.

(2) They shall come into force on the 22nd day of January, 2017.

2. In the Point of Taxation Rules, 2011, after rule 8A, the following rule shall be inserted, namely,—

"8B. Determination of point of taxation in case of services provided by a person located in non-taxable territory to a person in non-taxable territory.- Notwithstanding anything contained in these rules, the point of taxation in respect of services provided by a person located in non-taxable territory to a person 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, shall be the date of bill of lading of such goods in the vessel at the port of export."

[F. No. 354/42/2016-TRU]

(Mohit Tewari)

Under Secretary to the Government of India

Note.- The principal rules were published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide notification No. 18/2011 – Service Tax, dated the 1st of March, 2011 vide number G.S.R. 175(E) dated the 1st of March, 2011 and last amended vide notification No. 24/2016 - Service Tax dated 13th April, 2016 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), by number G.S.R. 421.(E), dated the 13th April, 2016.

[TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY, PART II, SECTION 3, SUB-SECTION (i)]

**GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE**

**CENTRAL BOARD OF EXCISE AND CUSTOMS
NEW DELHI**

NOTIFICATION NO

15/2017-Service Tax, Dated: April 13, 2017

In exercise of the powers conferred by sub-section (2) of section 68 of the Finance Act, 1994 (32 of 1994), the Central Government, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 30/2012-Service Tax, dated the 20th June, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 472 (E), dated the 20th June, 2012, namely:-

1. In the said notification, for Explanation III and Explanation IV, following shall be substituted, namely:-

"Explanation III.- The business entity located in the taxable territory who is litigant, applicant or petitioner, as the case may be, shall be treated as the person who receives the legal services for the purpose of this notification.

Explanation IV.- For the purposes of this notification, "non-assesse online recipient" has the same meaning as assigned to it in clause (ccba) of sub-rule 1 of rule 2 of Service Tax Rules, 1994.

Explanation V.- For the purposes of this notification, in respect of 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, person liable for paying service tax other than the service provider shall be the importer as defined under clause (26) of section 2 of the Customs Act, 1962 (52 of 1962) of such goods."

2. This notification shall come into force on the 23rd day of April, 2017.

[F. No. 354/42/2016-TRU]

(Mohit Tewari)
Under Secretary to the Government of India

Note:- The principal notification was published in the Gazette of India, Extraordinary, vide notification No. 30/2012 - Service Tax, dated the 20th June, 2012, vide number G.S.R. 472 (E), dated the 20th June, 2012 and last amended vide notification No. 3/2017-Service Tax, dated the 12th January, 2017 vide number G.S.R. 26 (E), dated the 12th January, 2017.

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**GOVERNMENT OF INDIA
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DEPARTMENT OF REVENUE
CENTRAL BOARD OF EXCISE AND CUSTOMS
NEW DELHI**

NOTIFICATION NO

16/2017-Service Tax, Dated: April 13, 2017

In exercise of the powers conferred by sub-section (1), read with sub-section (2) of section 94 of the Finance Act, 1994 (32 of 1994), the Central Government hereby makes the following rules further to amend the Service Tax Rules, 1994, namely:-

1. (1) These rules may be called the **Service Tax (Third Amendment) Rules, 2017**.

(2) Save as otherwise provided, they shall come into force on the 23rd day of April, 2017.

2. In the Service Tax Rules, 1994,-

(i) in rule 2, in sub-rule (1), in clause (d), in sub-clause(i), for item (EEC), the following shall be substituted, namely:-

"(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 importer as defined under clause (26) of section 2 of the Customs Act, 1962 (52 of 1962) of such goods;"

(ii) in rule 6,-

(a) after sub-rule (7C), the following sub-rule shall be inserted with effect from 22nd January, 2017, namely :-

"(7CA) The person liable for paying service tax for the taxable 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, shall have the option to pay an amount calculated at the rate of 1.4% of the sum of cost, insurance and freight (CIF) value of such imported goods."

(b) in sub-rule (7D) and (7E), for the brackets, words and figures "(7B) or 7(C)" wherever they occur, the brackets, word and figures "(7B), (7C) or (7CA)" shall be substituted with effect from 22nd January, 2017."

[F. No. 354/42/2016-TRU]

(Mohit Tewari)
Under Secretary to the Government of India

Note: - The principal rules were published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide notification No. 2/94-Service Tax, dated the 28th June, 1994 vide number G.S.R. 546 (E), dated the 28th June, 1994 and last amended vide notification No. 6/2017-Service Tax, dated the 30th January, 2017 vide number G.S.R. 73 (E), dated the 30th January, 2017.

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**[TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY,
PART II, SECTION 3, SUB-SECTION (i)]**

**GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
CENTRAL BOARD OF EXCISE AND CUSTOMS
NEW DELHI**

NOTIFICATION NO

16/2017-Service Tax, Dated: April 13, 2017

In exercise of the powers conferred by sub-section (1), read with sub-section (2) of section 94 of the Finance Act, 1994 (32 of 1994), the Central Government hereby makes the following rules further to amend the Service Tax Rules, 1994, namely:-

1. (1) These rules may be called the **Service Tax (Third Amendment) Rules, 2017**.

(2) Save as otherwise provided, they shall come into force on the 23rd day of April, 2017.

2. In the Service Tax Rules, 1994,-

(i) in rule 2, in sub-rule (1), in clause (d), in sub-clause(i), for item (EEC), the following shall be substituted, namely:-

"(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 importer as defined under clause (26) of section 2 of the Customs Act, 1962 (52 of 1962) of such goods;"

(ii) in rule 6,-

(a) after sub-rule (7C), the following sub-rule shall be inserted with effect from 22nd January, 2017, namely :-

"(7CA) The person liable for paying service tax for the taxable 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, shall have the option to pay an amount calculated at the rate of 1.4% of the sum of cost, insurance and freight (CIF) value of such imported goods."

(b) in sub-rule (7D) and (7E), for the brackets, words and figures "(7B) or 7(C)" wherever they occur, the brackets, word and figures "(7B), (7C) or (7CA)" shall be substituted with effect from 22nd January, 2017."

[F. No. 354/42/2016-TRU]

(Mohit Tewari)
Under Secretary to the Government of India

Note: - The principal rules were published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide notification No. 2/94-Service Tax, dated the 28th June, 1994 vide number G.S.R. 546 (E), dated the 28th June, 1994 and last amended vide notification No. 6/2017-Service Tax, dated the 30th January, 2017 vide number G.S.R. 73 (E), dated the 30th January, 2017.

**GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
CENTRAL BOARD OF EXCISE AND CUSTOMS
TAX RESEARCH UNIT
NEW DELHI**

CIRCULAR NO

204/2/2017-Service Tax, Dated: February 16, 2017

To

Principal Chief Commissioners of Customs and Central Excise(All)

Principal Chief Commissioners of Central Excise & Service Tax (All)

Principal Director Generals of Goods and Service Tax/System/CEI

Director General of Audit/Tax Payer Services,

Principal Commissioners/ Commissioners of Customs and Central Excise
(All)

Principal Commissioners/Commissioners of Central Excise and Service Tax
(All)

Principal Commissioners/Commissioners of Service Tax (All)

Principal Commissioners/Commissioners LTU/Central excise/Service Tax
(Audit)

Sub:- Applicability of service tax on the services by way of transportation of goods by a vessel from a place outside India to the customs station in India w.r.t. goods intended for transshipment to any country outside India - reg.

Representations seeking clarification on levy of service tax on the services by way of transportation of goods by a vessel from a place outside India to the customs station in India with respect to goods intended for transshipment to any country outside India.

2. In this regard, it is mentioned that the goods landing at Indian ports which are destined for any other country are allowed to be transhipped through Indian territory without payment of Customs duty in India. This is subject to the condition that such goods imported into a customs station are mentioned in the import manifest or the import report, as the case may be, as for transshipment to any place outside India. [Section 54(2) of the Customs Act,

1962]. Further, Goods Imported (Conditions of Transshipment) Regulations, 1995 have been prescribed for the procedure to be followed for transshipment of such goods.

3. It is pertinent to mention that as per the charging Section 66B of the Finance Act, 1994, service tax is leviable on services provided or agreed to be provided in the taxable territory. Whether a service is provided or agreed to be provided in the taxable territory or not, is determined as per Section 66C of the Finance Act, 1994 and the Place of Provision of Services Rules, 2012 made thereunder. In terms of the applicable rule 10 of the Place of Provision of Services Rules, 2012, the place of provision of services of transportation of goods by air/sea, other than by mail or courier, is the destination of the goods.

4. Thus, with respect to goods imported into a customs station in India intended for transshipment to any country outside India, the destination of goods is not a place in taxable territory in India but a country other than India if the same is mentioned in the import manifest or the import report as the case may be and the goods are transhipped in accordance with the provisions of the Customs Act, 1962 and rules made there under. Hence, with respect to such goods, services by way of transportation of goods by a vessel from a place outside India to the customs station in India are not taxable in India as the destination of such goods is a country other than India.

5. All concerned are requested to acknowledge the receipt of this circular.

6. Trade Notice/Public Notice to be issued. Difficulty if any, in the implementation of the circular should be brought to the notice of the Board. Hindi version would follow.

F.No.354/42/2016-TRU

(Dr Abhishek Chandra Gupta)
Technical Officer (TRU)

**GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
CENTRAL BOARD OF EXCISE AND CUSTOMS
TAX RESEARCH UNIT
NEW DELHI**

CIRCULAR NO

206/4/2017-Service Tax, Dated: April 13, 2017

To,

Principal Chief Commissioners of Customs and Central Excise(All)
Principal Chief Commissioners of Central Excise & Service Tax (All)
Principal Director Generals of Goods and Service Tax/System/CEI
Director General of Audit/Tax Payer Services,

Principal Commissioners/ Commissioners of Customs and Central Excise (All)
Principal Commissioners/Commissioners of Central Excise and Service Tax
(All)

Principal Commissioners/Commissioners of Service Tax (All)

Principal Commissioners/Commissioners LTU/Central excise/Service Tax
(Audit)

Sub:- Issues related to levy of service tax on the services 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 to the customs station in India - reg.

Your kind attention is invited to notification No. [1/2017-ST](#) dated 12th January, 2017, whereby service tax exemption was withdrawn for services 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. Further, in relation to such services, 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, was notified as the person liable to pay service tax vide notification No. [2/2017](#) and [3/2017-ST](#) both dated 12th January, 2017.

2. Several representations have been received seeking clarification on levy of service tax on the services 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 to the customs station in India. Consequently, it has been decided to make certain amendments in the service tax provisions in this regard. In this context, kind attention is invited to notification No. [13/2017-ST](#), [14/2017-ST](#), [15/2017-ST](#) and [10/2017-CE \(N.T.\)](#) all dated 13th April, 2017, which are explained as given below.

2.1 Vide notification Nos. [13/2017-ST](#) and [15/2017-ST](#) both dated 13th April, 2017, the importer of goods as defined in the Customs Act, 1962 has been made liable for paying service tax in cases of services of transportation of goods by sea provided by a foreign shipping line to a foreign charterer with respect to goods destined for India. This change shall come into effect from 23rd April, 2017.

2.2 Vide notification No. [13/2017-ST](#) dated 13th April, 2017, the person liable to pay service tax has been provided an alternate mechanism for calculating and paying service tax. Swachh Bharat Cess and Krishi kalyan Cess will be paid accordingly. This option has been made available with effect from 22nd January, 2017.

2.3 Vide notification No. [14/2017-ST](#) dated 13th April, 2017, the point of taxation of services provided by a foreign shipping line to foreign charterer with respect to goods destined for India, has been specified as the date of bill of lading of goods in the vessel at the port of export. This option will be available with effect from 22nd January, 2017. Thus, no service tax is leviable if the bill of lading is of date prior to 22nd January, 2017.

2.4 Vide notification No. **10/2017-CE (N.T.)** dated 13th April, 2017, the importer of the goods has been allowed to avail Cenvat credit on the basis of the challan of payment of service tax by the said importer on the services provided by a foreign shipping line to a foreign charterer with respect to goods destined for India. This change shall come into effect from 23rd April, 2017.

3. Clarification has also been sought with regard to calculation of service tax regarding services of transportation of goods by sea provided by a foreign shipping line. In case of services of transportation of goods by sea provided by a foreign shipping line to a foreign charterer w.r.t. goods destined for India, an option has been provided in the Service Tax Rules to pay service tax @ 1.4% of value of imported goods as determined under Section 14 of the Customs Act, 1962 and the rules made thereunder.

3.1 In addition, Swachh Bharat Cess and Krishi kalyan Cess will be paid accordingly [ST @1.4% of Customs value of goods, Swachh Bharat Cess and Krishi Kalyan Cess each @ 0.05% of Customs value of goods].

3.2 This option has been made available with effect from 22nd January, 2017.

4. It is pertinent to point out here that under notification No. **26/2012-ST** dated 20.06.2012 (Sl. No. 10), there is an exemption on 70% of value of services of transportation of goods in a vessel subject to the fulfillment of the condition that Cenvat credit on inputs and capital goods used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004. This conditional exemption has been extended for the reason that out of the full value of such services, the exempted value of service has already suffered taxes (Central Excise) which would have been available as Cenvat credit to set off service tax on full value of service. In effect, service tax is levied on the value added only. However, in case of foreign shipping lines, their services being exports from their home country, are zero-rated in their home country and thus have suffered no taxes. Further the foreign shipping lines do not get registered in India and do not follow the provisions of Cenvat Credit Rules.

4.1 Thus, the condition for availing exemption under notification No. **26/2012-ST** dated 20.06.2012 (Sl. No. 10) is not fulfilled by the foreign shipping lines. Hence, benefit of conditional exemption will not be available to them and service tax will be paid on full value of services. Further, the amount of service tax payable under the option available under Service Tax Rules, 1994 has been prescribed accordingly.

5. All concerned are requested to acknowledge the receipt of this circular.

6. Trade Notice/Public Notice to be issued. Difficulty if any, in the implementation of the circular should be brought to the notice of the Board. Hindi version would follow.

F.No.354/42/2016-TRU

(Dr. Ravindra Kumar)
Technical Officer (TRU-II)

[TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY,
PART II, SECTION 3, SUB-SECTION (i)]

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
CENTRAL BOARD OF EXCISE AND CUSTOMS
NEW DELHI

NOTIFICATION NO

10/2017-Central Excise (N.T.), Dated: April 13, 2017

In exercise of the powers conferred by section 37 of the Central Excise Act, 1944 (1 of 1944) and section 94 of the Finance Act, 1994 (32 of 1994), the Central Government hereby makes the following rules further to amend the CENVAT Credit Rules, 2004, namely:—

1. (1) These rules may be called the CENVAT Credit (Second Amendment) Rules, 2017.

(2) They shall come into force on the 23rd day of April, 2017.

2. In the CENVAT Credit Rules, 2004,—

(1) in rule 2, in clause (l), for the words starting with "*input service*" means' and ending with "*clearance of final products upto the place of removal,*" following shall be substituted, namely,-

"input service" means,-

(i) 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 where service tax is paid by the manufacturer or the provider of output service being importer of goods as the person liable for paying service tax for the said taxable services and the said imported goods are his inputs or capital goods; or

(ii) any service used by a provider of output service for providing an output service; or

(iii) any service used by a manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products upto the place of removal,;

(2) in rule 4, in sub-rule (7), after the second proviso, following shall be inserted namely,-

"Provided also that in respect of 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 where service tax is paid by the manufacturer or the provider of output service being importer of goods as the person liable for paying service tax for the said taxable services, credit

of service tax paid by the person liable for paying service tax shall be allowed after such service tax is paid:";

(3) in rule 9, in sub-rule (1), after clause (e), following shall be inserted, namely,-

"(ea) a challan evidencing payment of service tax by the manufacturer or the provider of output service being importer of goods as the person liable for paying service tax for the 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; or".

[F. No. 354/42/2016-TRU]

(Mohit Tewari)

Under Secretary to the Government of India

Note.- The principal rules were published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide notification **No. 23/2004 - Central Excise (N.T.)** dated the 10th September, 2004 vide number G.S.R. 600(E), dated the 10th September, 2004 and last amended vide notification **No. 4/2017 - Central Excise (N.T.)** dated 2nd February, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 98 (E), dated the 2nd February, 2017.