

CIF imports and ST/GST liability on ocean freight
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1.0 Import pricing is of two types, viz., FOB (Free on board) or CIF (Cost, Insurance and Freight). Under FOB pricing, the foreign suppliers bears all the cost upto loading the goods into the vessel and the importer has to bear the cost of freight. The importer may engage either an Indian based shipping line or a foreign based shipping line and the importer would be availing the services of such shipping line for ocean transport of the import goods.

Under Service Tax regime.

2.0 As per sub clause (ii) of clause (p) of Section 66D of the Finance Act, the following service was in the negative list and hence the same was not liable to any service tax.

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

2.1 Vide Finance Act, 2016, the above said sub clause was omitted with effect from 01.06.2016 and consequently transportation of goods by a vessel from a place outside India upto the customs station of clearance in India became liable to service tax from this date. But in case if air imports the following exemption has been given under Notification 25/2012.

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

2.2 If the service provider (shipping line) is situated outside India, the liability to pay service tax would be on the service recipient, viz., the importer, as per S.No. 10 of Notification 30/2012 ST Dt. 20.06.2012. So in case of FOB imports, when the services of shipping line is availed for transportation, appropriate service tax would be payable by the shipping line, if the shipping line is based in India and the service tax would be payable by the importer under reverse charge if the shipping line is not based out of India. But in case of CIF imports, where the services of shipping line was used not by the importer, but by the exporter (foreign supplier) and the import price includes the freight component also, there would be no service tax liability on the freight component, as the service provider (shipping line) as well as the service recipient (foreign supplier) are situated outside India. This has led to an anomalous situation whereby service tax would be attracted on ocean freight in case of FOB imports, but it would not be attracted in case of CIF imports.

2.3 In order to correct this anomaly, certain amendments were made.

3.0 Vide Notification 3/2017 Dt. 12.01.2017, which came into effect from 22.01.2017, the following service was notified for reverse charge.

(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;"

3.1 S.No. 12 was introduced in Notification 30/2012 ST Dt. 20.06.2012 (Notification prescribing reverse charge) which reads as,

Sl. No.	Description of a service	Per centage of service tax payable by the person providing service	Percentage of service tax payable by the person receiving the service
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 %".

(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."

3.2 As per the above, in case of transportation of goods by a vessel from outside India upto an Indian port, where both the service provider and service recipient are outside India (which would mean CIF imports) the liability to pay service tax under reverse charge would be on the person who files the import manifest (agent of the shipping line in India).

3.2 Consequential amendment was also made in sub clause (i) clause (d) of sub rule (1) of Rule 2 of Service Tax Rules, 1994, defining person liable for payment of service tax, by introducing the following, vide Notification 2/2017 ST Dt.12.01.2017 with effect from 22.01.2017.

(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.

4.0 The above provisions has led to lot of practical difficulties, such as,

- how to claim the service tax thus paid by the person filing Import Manifest, from the importer;
- how to avail cenvat credit by the importers; etc.

Hence the above provisions were further amended by the following notifications, with effect from 13.04.2017.

4.1 Vide Notification 16/2017 sT Dt. 13.04.2017, the definition of person liable for payment of service tax under Rule 2 (1) (d) (i) of Service Tax Rules, was amended as,

(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.

4.2 Further vide the same notification, a new sub rule (7CA) has been introduced under Rule 6 of the Service tax Rules, 1994 which read as,

(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.

4.3 Vide Notification 15/2017 ST Dt. 13.04.2017, Notification 30/2012 ST Dt. 20.06.2012 was amended and the existing Explanation IV has been replaced by a new Explanation V, which read as,

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.

4.4 Vide Notification 14/2016 ST Dt. 13.04.2017, a new rule 8B has been introduced in Point of Taxation Rules, 2011.

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*

4.5 Vide Notification 10/2017 CE NT Dt. 13.04.2017, the definition of "input service" has been amended to include,

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

4.6 As a result of the above amendments, the importer is made liable to pay service tax in respect of the services of transportation of goods by vessel from a foreign port to Indian port in case of CIF imports. For this purpose, an option has been given to pay service tax @ 1.5 % (including Swachh Bharat Cess and Krish Kalyan Cess) on the CIF value, as the freight component would not normally be available.

4.7 The above position would continue upto 30.06.2017, till the introduction of GST.

Position under GST.

5.0 As per Section 13 of the IGST Act, 2017, where the location of supplier or the location of recipient is outside India , the place of supply of shall be determined in accordance with the provisions of this section. As per sub section (9) thereof,

(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.

5.1 So, in case of imports, the place of supply of services of transportation of goods shall be in India and the same shall be liable to GST.

5.2 As per S.No. 10 of Notification 10/2017 Integrated Tax (Rate) Dt. 28.06.2017, the following situation is notified for reverse charge.

10	Services supplied by 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.	A person located in non-taxable territory	Importer, as defined in clause (26) of section 2 of the Customs Act, 1962(52 of 1962), located in the taxable territory.
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5.3 As per S.No. 9 (ii) of Notification 8/2017 Integrated Tax (Rate) Dt. 28.06.2017, the following rate of GST has been prescribed.

9	Heading 9965 (Goods transport services)	(i) Transport of goods by rail (other than services specified at item no. (iv)).	5	Provided that credit of input tax charged in respect of goods in supplying the service is not utilised for paying integrated tax, central tax, state tax or union territory tax on the supply of the service
		(ii) Transport of goods in a vessel including 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	5	Provided that credit of input tax charged on goods (other than on ships, vessels including bulk carriers

		transportation of goods by a vessel from a place outside India up to the customs station of clearance in India.		and tankers) used in supplying the service has not been taken <i>Explanation</i> : This condition will not apply where the supplier of service is located in non-taxable territory. [Please refer to <i>Explanation</i> no. (iv)]
		(iii) Services of goods transport agency (GTA) in relation to transportation of goods (including used household goods for personal use). <i>Explanation.</i> - "goods transport agency" means any person who provides service in relation to transport of goods by road and issues consignment note, by whatever name called.	5	Provided that credit of input tax charged on goods and services used in supplying the service has not been taken [Please refer to <i>Explanation</i> no. (iv)]
		(iv) Transport of goods in containers by rail by any person other than Indian Railways.	12	-
		(v) Goods transport services other than (i), (ii), (iii) and (iv) above.	18	-

4. Where the value of taxable service 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 is not available with the person liable for paying integrated tax, the same shall be deemed to be 10% of the CIF value (sum of cost, insurance and freight) of imported goods.

6.0 In view of the foregoing, under GST regime, the importers are liable to pay IGST @ 5 % on 10 % of the CIF value of goods being imported, in respect of the transportation of goods by vessel services.