



Service Tax on Port and CHA Services

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Background

Under the negative list based taxation, service tax is leviable on all services, other than those covered in negative list or a subject matter of exemption. There is no blanket exemption to the services which are provided in port. In this backdrop we examine what is port service and what are the service tax implications of port services under negative list based taxation.

What is meant by term 'port'?

Section 65B (38) sets out "port" has the meaning assigned to it in clause (q) of section 2 of the Major Port Trusts Act, 1963 or in clause (4) of section 3 of the Indian Ports Act, 1908;

Section 2(q) of Major Port Trusts Act, 1963 sets out "port" means any major port to which this Act applies within such limits as may, from time to time, be defined by the Central Government for the purposes of this Act by notification in the Official Gazette, and, until a notification is so issued, within such limits as may have been defined by the Central Government under the provisions of the Indian Ports Act;

Clause (4) of section 3 of the Indian Ports Act, 1908 says that;

3. Definitions. In this Act, unless there is anything repugnant in the subject or context,--....

(4) " port" includes also any part of a river or channel in which this Act is for the time being in force:

What is Port service and Customs House Agent service?

Under present service tax law, there is no concept of classification of taxable services. We could look for guidance into old law to determine the scope of port services.

In section 65(82), 'Port service' means any service rendered within a port or other port in any manner. As per section 65(105)(zn), any service provided or to be provided to any person, by any other person, in relation to port services in a port, in any manner. Section 65(105)(zzl) sets out- any service provided or to be provided to any person, by any other person, in relation to port services in other port, in any manner.

Circular 334/1/2010 TRU dated 26.02.2010, clarified the definition of taxable services, 'Port Services' [Section 65(105)(zn)] and the 'Other Port Services' [Section 65(105)(zzl)] are being amended to provide that,-

(a) All services provided entirely within the airport/port premises would fall under these services; and

(b) An authorization from the airport/port authority would not be a precondition for taxing these services.

As the above mentioned provisions are not applicable wef 1.7.12, this clarification may not be relevant after 1.7.12.

Customs House Agent Service (CHA)

We could look into old law as there is no definition post 1.7.12 for CHA. Any service provided or to be provided to any person by a custom house agent in relation to any of the following is liable to service tax:

- Entry of Conveyance
- Departure of conveyances
- Import of goods
- Export of goods

Section 65(35) defined "custom house agent" to mean a person licensed, temporarily or otherwise, under the regulations made under sub-section (2) of section 146 of the Customs Act, 1962

Whether there is any entry in negative list?

The negative list of services is given under section 66D of the Finance Act, 1994 on which no service tax would be levied. The first service in the negative list is services provided by Government and local authority, which has been defined under section 66D(a) as under.

Services by Government or a local authority excluding the following services to the extent they are not covered elsewhere-

- (i) services by the Department of Posts by way of speed post, express parcel post, life insurance and agency services provided to a person other than Government;
- (ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;
- (iii) transport of goods or passengers; or

- (iv) support[omitted wef 1.4.15] services, other than services covered under clauses (i) to (iii) above, provided to business entities;

The above definition has been given in two limbs, first limb to exclude the service provided by the Government and local authority from the tax net and the second limb is to bring certain services provided by the Government and local authority into the tax net.

Services provided by government in relation to aircraft or vessel would be liable for service tax, such service could be provide either inside the precincts of the ports or airports or outside the precincts of the ports. The service provided in relation to vessel would also be taxable, when provided by other than the Government, for example such service provided by a Port Trust of India. Further even in case this service is provided to the Government, the service would still be liable for service tax.

Whether there is any exemption?

There is no blanket exemption to port services or CHA services. But there is exemption in respect of certain specified services pertaining to port. Entry 14 in the notification exempts services provided by way of construction, erection, commissioning, installation, of original works pertaining to –

- (a) An airport, port or railways, including monorail or metro;.....

Original work of Construction, erection, commissioning or installation pertaining to an airport or port is now taxable. This is with effect from April 1, 2015

Issues

1. Whether charges collected by a port for the storing of materials in allocated areas, from exporters are taxable?

Comments: *The charges collected for using the space available in a port is taxable.*

2. Whether service of supply of manpower is taxable?

Comments: *The service of manpower done by port is also taxable.*

3. Whether charge for examination of cargo before entering port area is liable to Service tax?

Comments: *Such charges collected are in the nature of fees for making available infrastructure to exporters. Therefore such fee is liable to service tax.*

4. Whether the reimbursements claimed in the bills of the CHA can be excluded?

Comments: *The reimbursements of expenses could be excluded from ST levy provided expenditure is incurred to meet the obligation of service receiver on his behalf and recovered at actuals as supported by the documentary evidence of third party invoices. The adding of a margin, which is the real profit on such expenditure, could cause some major issues for claiming as reimbursements.*

Section 67 explanation added in FA15. Clarity may come once the new Valuation Rules are prescribed.

5. Whether there is any exemption to transport of goods by GTA to port for exporters?

Comments: *Yes. The notification 31/12-ST has been issued to exporters to apply for and obtain refund, if applied for as specified. It exempts:*

Service provided to an exporter for transport of the said goods by goods transport agency in a goods carriage from any container freight station or inland container depot to the port or airport, as the case may be, from where the goods are exported; or

Service provided to an exporter in relation to transport of the said goods by goods transport agency in a goods carriage directly from their place of removal, to an inland container depot, a container freight station, a port or airport, as the case may be, from where the goods are exported.

6. Whether service tax is applicable/ Discounts / Rebate [called incentives] received by CHA from Airlines and Shipping Lines?

Comments: *The airline/shipping line gives a discount nomenclated as incentive for the activity of booking space in liner. If the published rate is Rs. 155/-, and the agreed rate is Rs 120/- it is sufficient CHA pay liner Rs. 120/-. In absence of provision of services by CHA to airline/shipping line in exchange for a consideration, the service tax levy fails.*

7. Whether service tax is applicable on Export Freight Charges paid to Airlines and Shipping Lines?

Comments: *As per Rule 10 of POPS Rules, place of provision of service is destination of goods outside India. CHA is not liable to service tax on export freight charges collected and paid to Airline and shipping lines.*