

## Importers of Goods: Need to Register and pay Service Tax

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### Background:

Sounds unusual but true. Thanks to the budget proposal by Finance Minister.

In 2012 when Negative List was introduced it was announced by then Finance Minister Mr. Pranab Mukharjee that

*"I propose to tax all services except those in the negative list. **The list comprises 17 heads and has been carefully drawn up, keeping in view the federal nature of our polity, the best international practices and our socio-economic requirements**"*

But it appears that the intention and principles behind putting services within Negative List have been diluted with considerable number of services being phased out of the List in short time span of four years. Current year budget is also not exception and three services, wholly or partially, have been excluded from the Negative List.

### Amendment in Negative List:

One of such service covered in the Negative List proposed to be deleted in the Finance Bill is *"services by way of transportation of goods by an aircraft or a vessel from a place outside India to the customs station of clearance in India"*.

The entry is intended to cover the services of transportation in the course of importation of Goods in India when imported by **Aircraft** or **Vessels**. Above provision would become effective from the 1.6.2016.

### Other consequential amendments:

Consequent to proposed deletion, following other amendments have been proposed:

- Transportation of Goods by an **aircraft** from a place outside India upto the customs station of clearance in India has been included in the Mega Exemption Notification and excluded from service tax levy. (effective from 1.6.2016)
- Notification No. 26/2012 has been amended to allow the **credit of input service** to any person engaged in Transport of goods by a vessel. Tax needs to be paid on 30% of the gross amount charged.

It can be seen from above that there shall be no changes in the taxability when the goods are transported through aircraft (being shifting the entry from negative list to mega exemption notification). But transportation of goods through vessel from outside India to the customs station of clearance in India has been made liable to tax.

**Customs provision:** Customs duty is applicable on importation of goods from outside India on assessable value. The Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 have been notified to arrive at the assessable value for the purpose of charging customs duty. Rule 10 (2) of the said rule provides for inclusion of the cost of transport of the imported goods upto the place of importation. It makes clear that the customs duty is applicable on freight whether by vessel or aircraft.

**Impact of proposed amendment:** Proposed amendment seeks to levy service tax on the charges for transportation of goods through vessel. This is nothing but charging service tax

on the same amount on which customs duty has already been paid. This indicates that in zeal to garner more revenue, the government has forgotten the basic cannon of taxation that the same transaction should not be taxed multiple times.

**Person liable to pay service tax:** It is relevant to understand as to the person who shall be liable to pay service tax post amendment. Following could be different possibilities

- 1. Shipping line located in India:** When the shipping line engaged in transportation of goods is located in India and bill is raised within India, it will charge service tax on ocean freight. The tax needs to be paid on 30% of the invoice amount (effective rate 4.5%). It can take credit on input service used for providing such service.
- 2. Shipping line located outside India:** When the shipping line is located outside India and raises invoice for ocean freight on importer or his agent located in India, it would be termed as import of service. Liability to pay service tax would be on service receiver in India at the rate of 4.5%

There could be different models being followed by importer in India for importation of goods. The person liable to pay tax would be determined based on the manner in which transaction is executed as discussed below:

- a) Importer appointing freight forwarder on principle to principle basis:** Here, freight forwarder is responsible to undertake all necessary formalities for clearance of goods at agreed lumpsum consideration. The shipping line raises bill on freight forwarder who recover from the importer as a part of the package offered. Service receiver in respect of transportation services would be freight forwarder and he needs to pay service tax under reverse charge @ 4.5% on the ocean freight charges.
- b) Appointing Customs House Agent (CHA) for making customs clearance:** CHA is appointed by importer who undertakes all customs formalities. It enters into contract with all agencies acting as agent of importer. Charges paid to different vendors are claimed as reimbursement from importer. In addition, separate agency charge is also recovered.

As the CHA does not enter into contract with shipping line on principal to principal basis but act as pure agent of importer, it shall not be considered as service receiver and not liable to pay service tax.

The importer is person availing the services of shipping line and needs to pay service tax on ocean freight charges. Invoice for ocean freight is given by CHA to importer in addition to other customs related documents. Importer needs to examine whether shipping line is located in India and has charged service tax on the invoice. If yes, there is no liability on importer. But where shipping line is located outside India, importer needs to pay service tax on such charges at the rate of 4.5% under reverse charge. Credit of the same may be taken by importer unless it is engaged in trading of goods imported.

**Can Importer authorise the CHA to pay service tax under RCM?** Many times it may happen that importer is engaged in importation of goods and its subsequent trading. It may not be registered with service tax department. However, it will have to register with service tax department to pay service tax under reverse charge.

The assessee as per Finance Act, 1994 *means a person liable to pay tax and includes his agent*. Importer could take a stand that CHA has been acting as his agent while making customs clearance and making payment to third parties and accordingly could authorise him to pay service tax on his behalf. However, revenue could dispute the same and may demand service tax from importer.

**Conclusion:** The proposed amendment has raised questions as to why different treatment has been extended when goods are imported from vessel and aircraft and whether customs duty would be applicable on service tax portion also. The amendment proposed is certainly going to cost more for importation in India and appears to be in line with the policy of government to thrust more on export promotion and minimisation of import in India.

Note: Above provision shall become effective from 1.6.2016.