

## **New service tax levy on ocean freight**

- **CA Madhukar N Hiregange  
& CA Mahadev R**

Service tax levy on ocean freight charges even when the services are provided outside India has attracted lot of criticism from trade within the country. This would also effect countries like Nepal as the levy would affect the transit treaty between the countries. Service tax levy from 22<sup>nd</sup> January 2017 has created few confusions with respect to aspects like liability, point of taxation and Cenvat credit etc. Importers who hitherto were not liable for service tax on ocean freight upto the customs station in India are disadvantaged when services. In this article, we have tried to analyse these issues.

### ***Service tax levy on ocean freight***

Transportation of goods by vessel from outside India up to custom station of clearance in India was kept out of service tax levy as it was covered in negative list of services. However, from June 2016, this entry was removed from negative list to bring it in service tax ambit.

For payment of service tax, abatement of 70% was provided from total value and effective rate of service tax after abatement was brought to 4.5% (i.e 15% tax \*30% value). The liability to pay service tax in case of transportation services in a vessel would be on service provider. However, in case services provided by any person located in a non-taxable territory and received by any person located in the taxable territory, the liability would be on person receiving services in India under reverse charge mechanism.

### ***Services received in non-taxable territory were exempted***

Any services received by a person located in non-taxable territory (J&K state and any country outside India) from a person located in non-taxable territory was exempted from service tax vide sl.no.34(c) of mega exemption notification no.25/2012. Therefore, even the transportation of goods by vessels was exempted from service tax when services provided and received by a person located in non-taxable territory. This exemption resulted in lower freight cost when foreign vessels were hired by overseas exporters or by Indian importers. This exemption has been removed from 22<sup>nd</sup> January 2017.

### ***Service tax levy from 22<sup>nd</sup> January 2017***

Notification No.01/2017-ST (effective from 22<sup>nd</sup> January 2017) has been issued to exclude the services by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India from the exemption entry provided under sl.no. 34(c) of mega exemption notification. Thus, such transportation would be liable for tax going forward. This levy has created level playing field between foreign and local shipping lines.

### ***Person liable to pay is neither service provider or receiver***

Service tax cannot be imposed on service provider or receiver for services which are provided in non-taxable territory. Therefore, the burden of discharging service tax has been put on person who is appointed as person in-charge of vessel in India for compliance with relevant custom provisions (according to Section 29, 30 or 38 read with Section 148 of the Customs Act, 1962) when the vessel arrives in India. However, there is no restriction for collecting such service tax amount from the customers. Therefore, such person liable for tax could collect tax amount from customers in India. The tax liability would be on 30% of the value of services. Effective rate of service tax after abatement would be 4.5%. The value of ocean freight charged by shipping line or vessel would have to be considered for paying service tax.

However, the basic question which arises is whether service tax can be levied on person in-charge of vessel when services are provided by a person located in non-taxable territory and also received by a person in non-taxable territory. Section 66B of Finance Act 1994 provides for levy of service tax on the value of all services other than those services specified in the negative list, provided or agreed to be provided in taxable territory by one person to another. In the present case, one could argue that the services are provided as well as received in non-taxable territory and therefore, not liable for service tax.

### ***Point of taxation for paying service tax***

Point of taxation in respect of persons required to pay tax as recipients of service in respect of services notified in Section 68(2) of Finance Act 1994 would be date on which payment is made. If payment is not made within 3 months of invoice date, immediate date would be considered as point of taxation. The question is whether the person in-charge of vessel who has been made liable for service tax payment can be considered as recipient of service though he is not receiving the service. Even if yes, the point of taxation would be date of payment for the service. In this case, no payment would be made by person in-charge of vessel.

### ***Cenvat credit of service tax charged***

The person in-charge could collect the applicable service tax from his customer. Next issue to be understood is eligibility of credit to the customer based on invoice issued by person in-charge which could contain only service tax amount. But services received and provided by foreign parties located in non-taxable territories.

### **Conclusion:**

Though it is good intention to bring even foreign shipping line services on par with domestic liners, the practical issues could have been considered. There could be many contracts which would have been finalised without factoring the new service tax levy and without amending

the contracts, it would be difficult for the shippers / agents to collect tax from customers like overseas exporters. Therefore, industry could make representation and seek additional time for compliance in addition to challenging the levy itself as the services are provided as well as received in non-taxable territory. As GST law could be reality from July 2017, the government could have avoided this amendment. Professionals could communicate the issues involved with clients who could get impacted by this amendment.

Suggestions or views could be provided at [madukar@hiregange.com](mailto:madukar@hiregange.com) or [mahadev@hiregange.com](mailto:mahadev@hiregange.com).

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