

All about GST on Ocean Freight

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Ocean freight is a process through which merchandise goods, cargo and commodities are transported by ships via shipping lines. Over 90% of all the world's trade is carried by sea.

Indian GST on the Ocean Freight comes into light when the goods are transported from/to Indian port to/from any foreign port. For levy under GST, there should be supply of goods / services or both as specified under Section 7 of CGST Act. The activity of transportation carried out by the shipping line would clearly be a service and leviable to GST.

Upon referring to Notification No 11/2017 – CGST (Rate) vide entry 9 (ii), the rate of GST applicable is 5% subject to certain input tax credit restrictions. The service provider can also opt for charging 18% GST with ITC benefit.

Before analysing the GST on Ocean freight, one needs to understand the few international trade terms in relating to shipping. The freight expense borne in case of international trade can be categorised into two types (there are many other types but presently we are considering these two) based on transaction value:

- Based on CIF (Cash, Insurance and Freight) value - No separate transportation charges are imposed on the importer by the supplier, then the value charged on the goods is called CIF value. The recipient of goods pays the amount mentioned in the invoice raised by the exporter.

- Based on FOB (Free on board) value at the loading port - Where the importer has hired the ocean freight service provider and makes the payment for the transportation of goods.

Section 2 (93) of CGST Act defines that 'recipient of supply of goods or services or both' wherein it specifies that where a consideration is payable for the supply of goods or services or both, **the person who is liable to pay that consideration.**

From the above, one can understand that, in case of a CIF transaction, the exporter who has contacted the shipping line and pays the freight is the recipient of service of transportation of goods. On the other hand, in case of a FOB transaction where the importer has hired the ocean freight service provider and makes the payment for the transportation of goods, the importer can be considered as the recipient of services under GST.

GST on Export Ocean Freight / Outbound Freight:

When goods are transported through vessels/ships via shipping lines from India to outside India, then the Ocean Freight is charged by the shipping lines. As discussed above, Ocean freight for transportation of goods is liable to GST @5% without ITC / 18% with ITC.

Before analysing GST impact on various scenarios of outbound freight, we need understand, what type of tax to be discharged i.e., IGST / CGST + SGST. For this, we should refer to the place of supply provisions with respect to transportation of goods by Vessel.

- As per **section 12 (8) of IGST Act**, the place of supply of services by way of transportation of goods, including by mail or courier to, -
 - (a) a registered person, shall be the location of such person;
 - (b) a person other than a registered person, shall be the location at which such goods are handed over for their transportation.

Provided that where the transportation of goods is to a place outside India, the place of supply shall be the place of destination of such goods.]

This proviso is inserted vide Integrated Goods and Services Tax (Amendment) Act, 2018 **w.e.f. 01-02-2019**. The said proviso will not affect the taxability of the transaction but only affects the nature of tax to be discharged. **Finance Act, 2023 removes the said proviso so as remove the confusion regarding the availment ITC, other unnecessary complications.**

- As per **Section 13 (9) of IGST Act**, 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.***

Recently, there is an amendment in Finance Act, 2023 in which subsection 9 of section 13 omitted. The date of effect of such amendment yet to be notified. After notifying such change the place of supply would be the default / residual entry i.e., the location of the recipient of services would be the place of supply of services in cases of transportation of goods other than by mail or courier.

The CBIC vide Notification No. 02/2018 IGST (Rate) dt. 25/01/2018 (inserted Entry No 20B) granted absolute exemption (without any conditions) from GST liability, in terms of powers vested under Section 11 of CGST Act 2017 for out bound international freight with a sunset clause up to 30th September 2022 i.e., the exemption was available with effect from 25th January 2018 to 30th September 2022.

With effect from 1st October 2022, after removing the said exemption entry, the outbound transportation services are liable to GST like earlier to insertion of exemption entry.

Table 1.1

S. No	Description of Services	Status from 25-01-2018 till 30-09-2022	Status from 01-10-2022
20B	Services by way of transportation of goods by a vessel from customs station of clearance in India to a place outside India.	Exempt	Taxable

Even though the exporters represented that the removal of exemption of GST on Outbound Ocean Freight will impact the working capital of the exporters but the Government this time did not extend the exemption.

Now, we will examine the GST impact on various outbound transactions:

Table 1.2

Transportation Service provider (shipping line)	Recipient of Transportation Service	Place of Supply	Type of Tax	Taxability from 25 th Jan 2018 till 30 th Sep 2022	Taxability w.e.f. 1 st Oct 2022
India (Gujarat)	India (AP)	AP (before 01.02.2019) / Outside India (Section- 12 (8))	IGST / IGST	Exempted	Taxable (FCM)
India (AP)	India (AP)	AP (before 01.02.2019) / Outside India (Section-12 (8))	CGST+SGST / IGST	Exempted	Taxable (FCM)
Foreign shipping line	India (AP)	Outside India (Sec-13(9)) / India (Sec 13(2) - FA 2023	No levy (Note-1) / IGST - FA 2023	-	Not applicable / Taxable under RCM - FA 2023
India (Gujarat)	Foreigner	Outside India (Section- 13(9)) / 13 (2) - FA 2023	IGST	Exempted	Zero rated (Note-2)
Foreign Shipping line	Foreigner	Not in purview of Indian GST	-	-	-

Green Colour indicates the impact after insertion of proviso to 12 (8)

Light Blue indicates the impact after the implementation of FA 2023

Notes:

1. As per **section 2(11) of IGST Act**, "Import of services" means the supply of any service, where-
 - (i) the supplier of service is located outside India;
 - (ii) the recipient of service is located in India; and
 - (iii) **the place of supply of service is in India.**

The said transaction cannot be considered as "import of service" as it does not satisfy all the conditions specified above. After the notification effecting the amendment of Finance Act 2023, the place of supply will be the place of recipient and he is liable to discharge GST under RCM.

2. As per **Section 2(6) of IGST Act**, "**Export of services**" means the supply of any service when, -
 - (i) the supplier of service is located in India;
 - (ii) the recipient of service is located outside India;
 - (iii) the place of supply of service is outside India;
 - (iv) the payment for such service has been received by the supplier of service in convertible foreign exchange
 - (v) the supplier of service and the recipient of service are not merely establishments of a distinct person.

If above stated conditions are satisfied, then it is treated as "Export of Service" and can claim the status of Zero rate supplies and benefits pertaining to. If any of those conditions is not satisfied then it is not an export of service, supplier needs to pay tax under Forward Charge Mechanism (FCM).

GST on Import Ocean Freight / Inbound Freight:

When goods are transported through vessels/ships via shipping lines from Outside India to India, then the Ocean Freight is charged by the shipping lines. As discussed above, Ocean freight for transportation of goods is liable to GST @5% without ITC / 18% with ITC. Unlike outbound Ocean freight, there is no exemption provided for inbound Ocean freight.

Before analysing GST impact on various scenarios of inbound freight, we need to understand the GST liability on import of services. In accordance with Entry 1 of Notification 10/2017 – IGST (Rate), in case of any service supplied by any person who is located in a non-taxable territory to any person other than non-taxable online recipient (i.e., import of service), the person located in the taxable territory other than non-taxable online recipient should discharge GST under reverse charge.

Now, we will examine the GST impact on various inbound transactions:

Table – 1.3

Transportation Service provider	Recipient of Transportation Service	Place of Supply	Type of Tax
India (Gujarat)	India (AP)	Andhra Pradesh (Section- 12(8))	IGST (5% / 18%) (FCM)
India (AP)	India (AP)	Andhra Pradesh (Section- 12(8))	CGST + SGST (FCM) (5% / 18%)
India (AP)	Foreigner	Andhra Pradesh (Section-13(9)) / Outside India (Sec-13(2) – FA 2023)	CGST + SGST (FCM)/ IGST (Sec 7 (5)) (FCM) (5% / 18%) / Zero rated or IGST if the export conditions are not satisfied (FA – 2023)
Foreigner	India (AP)	Andhra Pradesh (section-13(9) of IGST Act) / India (sec – 13(2))	IGST (RCM) (5%) (Note-1)
Foreigner	Foreigner	Refer (Note-2)	Refer (Note-2)

Light Blue colour indicate the impact after implementation of FA, 2023

Notes:

1. As per section 2(11) of IGST Act, the said transaction would be covered as "Import of services" and Integrated tax must be paid in accordance with section 5(3) of IGST Act under Reverse charge mechanism as discussed in above para.
2. The Government after considering all the above four scenarios taxable under GST either under FCM / RCM, decided to levy GST on this transaction also even though the service provider and service receiver both are not in India.

To levy GST on the said transaction, the CBIC vide its notification no. 10/2017, S. No. 10 wherein it specified that in case of "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", the importer, as defined in clause (26) of section 2 of the Customs Act, 1962, located in the taxable territory would be considered as recipient of service and liable to discharge GST on RCM.

Since both the service provider and the service receiver are outside India, the value on which tax is to be paid (i.e., Ocean Freight) is not known to the importer. To resolve this issue, the Government by way of Corrigendum dated 05.07.2017 issued to Notification No. 8/2017 wherein it is notified that Ocean freight value should be deemed to be 10% of CIF Value.

Through these notifications and corrigendum, the department wishes to bring the concept of deemed Ocean Freight and made liable to tax in the hands of importer under Reverse charge Mechanism.

Further, the Hon'ble Gujarat High court in case of Mohit Minerals Vs Union of Indian 2018 has stayed and subsequently held that no GST is leviable on ocean freight paid by foreign supplier under CIF basis and that the entry 10 of the notification No. 10/2017 ibid and notification No. 8/2017 ibid are ultra vires the IGST, Act 2017, as they lack legislative competency and are declared to be unconstitutional.

Finally, the Hon'ble SC delivered decision on 19th May 2022 held that Indian importer is not liable for GST on the Ocean freight in CIF import contracts under RCM.

We understand that the Government has decided against seeking a review of the SC's verdict in Mohit Minerals case which is a welcoming measure for all.

Closing Remarks:

Based on a detailed analysis, one can conclude that GST is applicable on Outbound Ocean Freight @5% without ITC / 18% with ITC, except for specific scenarios (mentioned in Table 1.2), which includes a case where transportation service can be considered as Zero-rated supply subject to fulfilment of conditions specified.

Likewise, GST is applicable on inbound Ocean Freight @ 5% without ITC / 18% with ITC except specific scenarios (mentioned in Table 1.3). When a foreign supplier provides the transportation service to a foreign recipient, and those goods are received by an Indian importer under CIF basis, even though the Supreme Court held that RCM is not applicable in the said case, the entry in the RCM notification still present and not removed by the Government. If full credit is eligible and there is no accumulation of credit, then such cases suggested to discharge under RCM to avoid future litigation.

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