



TAX ALERT

***Applicability of Service Tax
under RCM when expenses
incurred by Foreign C&F
Agent, have already been
included in the value of
goods for discharge of
custom duty***



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Issue:-

Whether Service Tax is payable under RCM on the expenses incurred by Foreign C&F Agent , when such expenses have already been included in the value of goods for discharge of custom duty?

Facts and Background

M/S Berco Undercarriages (India) Pvt. Ltd (“The Appellant”) intends to import raw materials and proposes to appoint foreign C &F Agent who would provide services in the nature of material handling, arranging shipping liners, ocean freight, material clearance and other local transportation.

The Foreign C & F Agent would issue a consolidated invoice in foreign currency on which custom duties would be discharged.

Applicant’s Contention:

The Foreign C& F Agent would incur expenses in the nature of material handling, arranging shipping liners, ocean freight, material clearance etc which would be included in the value of the goods imported for discharge of custom duties. Discharge of service tax liability on the same expenses would lead to double taxation.

The applicant also put forward that the service by way of transportation of goods by an aircraft or vessel from a place outside India up to a customs station of India is covered under Negative List, hence not liable to service

Revenue’s Contention:

There is no statute indicating that service tax cannot be charged on the value on which custom duty has already been discharged.

Further, the services availed by the Applicant are in the nature of freight, insurance, loading, unloading etc and not just transportation of goods from outside India. Thus, in this situation, the applicant is proved to be recipient of service and thus liable to pay service tax under reverse charge mechanism.



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However, if the expenditures in the nature of freight, insurance, loading, unloading etc have been incurred by the Foreign C&F Agent as a pure agent, then such expenses would be deducted from the gross bill amount of C&F Agent.

Ruling:

Service tax will be discharged under RCM on the invoice raised by Foreign C&F Agent excluding the expenditures incurred as pure agent if the same is proved as per the rules.

Current scenario:

In the Finance Budget 2016-17, inward transportation of goods by vessel has been excluded from the negative list and brought under the tax net. Consequently, freight charges will suffer double taxation, since the same will be included in the FOB value and will be liable to Custom Duty.