

# TAX ALERT

## Ocean Freight of foreign carriers appointed by foreign vendor brought under the Service Tax net

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# INTRODUCTION

The service provided or agreed to be provided by way of transportation of goods by vessel from a place outside India upto the custom station in India shall be covered under complete **Reverse Charge Mechanism** where *the person who is getting the goods cleared from custom port* is liable to pay 100% service tax.

## **Backdrop:**

The services by way of transportation of goods by an aircraft or a vessel from a place outside India upto the customs station in India were initially kept in the negative list. The said service was omitted from the negative list. However, the services provided by way of transportation of goods by an aircraft from a place outside India upto the customs station of clearance in India were inserted in the Exemption Notification<sup>1</sup>. As a result the ocean freight for import consignments upto India sea port has become taxable, while air freight from import consignment continued to be exempted.

Consequently, the domestic shipping lines registered in India had to pay service tax under forward charge while the services availed from foreign shipping lines by a business entity located in India would get taxed under reverse charge under the hands of the Indian business entity.

But if the foreign consignor, engages a foreign shipping line to transport the goods to an Indian port, even though the place of provision of such service is India no service tax is payable, as per the exemption available under 34(c) of Notification No. 25/2012.

The aforesaid exemption created an irregular situation whereby if transport is arranged by the consignor based out of India through a shipping line outside India, service tax would not be payable whereas if the Indian importer engages a shipping line based outside India service tax would be applicable under reverse charge. In order to set right such irregular situation certain amendments have been made via a series of Notifications<sup>2</sup> with effect from 22.01.2017.

## **Scope of Service Tax widened:**

The Serial No. 34 (c) of the Notification No. 25/2012 was amended by Notification No. 01/2017- Service Tax in accordance to which if a foreign consignor engages a foreign shipping line to transport goods to an Indian port, service tax would be applicable from 22.01.2017.

In the definition of the term “person liable to pay service tax” under Rule 2(1) of the Service Rules, 1994 suitable

amended vide Notification No. 02/2017. Accordingly, the person in India who complies with Sections 29, 30 or 38 read with Section 148 of the Customs Act, 1962 with respect to such goods, has been made person responsible to pay service tax in respect of above scope.

As a result, as per Notification No. 03/2017, in a situation where the foreign consignor himself engages the services of a foreign shipping line, to transport goods to an Indian Port and pays freight, service tax on such freight is liable to be paid by the person in India, who shall be the person in charge of the vessel, person authorized to file Import General Manifest of any agent appointed in India by the person in charge of the vessel (Shipping Agent).

## **Liability to pay tax:**

In accordance with the above amendment where a foreign consignor has engaged a foreign shipping line to transport goods upto Indian Port, the person in charge of the vessel or his agent in India is liable to pay service tax. This is a peculiar situation where the person liable to pay service tax is neither the service provider nor the service receiver, but the agent of the shipping line. So the service for which the shipping agent is made liable to pay service tax is neither an output service provided by him nor an input service received by him. The shipping agent while raising any bills on the Indian Importer for any other clearance service provided by him shall charge service tax paid on the freight charges paid by him and not on the freight component paid by the foreign consignor to the foreign shipping line.

## **Cenvat Credit availability:**

The Indian shipping line is made liable to pay service tax for the service provided and received by two foreign persons. This service is not an output service in the hands of the person liable to pay service tax. Hence, he cannot utilize the cenvat credit balance to pay this liability and this has to be paid only in cash.

The Indian shipping agent recovers the service tax on the freight charges paid by him from the Indian Importer. So the Indian Importer can avail the cenvat credit on the service

tax paid provided that he has the valid document based on which credit can be taken.

### Taxability of said service can be challenged in Court:

As per the chargeability section of the Finance Act, 1994 service tax is applicable to the whole of India, except the

state of Jammu & Kashmir. Thus, the levy of service tax where the foreign consignor engages the foreign shipping line to provide the service shall be outside the purview of service tax chargeability and hence the same can be challenged in court.

## CONCLUSION

The entire impact of service tax on ocean freight can be summarized under the following **four** scenarios:

Serial No.	Scenarios	Person liable to pay tax
1	Where the Indian Importer engages Indian Shipping line.	Indian Shipping Line under Forward Charge.
2	Where the Foreign Consignor engages Indian Shipping line.	Indian Shipping Line under Forward Charge.
3	Where the Indian Importer engages Foreign Shipping line.	Indian Importer under Reverse Charge.
4	Where the Foreign Consignor engages Foreign Shipping line.	Indian Shipping agent at the customs port under Reverse charge.

<sup>1</sup>Notification No. 25/2012-Service Tax dated 20.06.2012

<sup>2</sup>Notification No. 01/2017, 02/2017 and 03/2017 -Service Tax dated 12.01.2017

