

TAX ALERT

Anomalies on chargeability of Ocean freight under Service Tax – Issuance of clarification

BT Associates is a premier Indirect Tax Consultant in Kolkata, delivering high quality services to clients in the area of Indirect Taxation. The firm covers the entire range of indirect taxes including specialized service offerings that are specific to different business needs.



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Twenty years of experience in Indirect Tax practice, specialist in Structuring & Planning and tax optimization under Indirect Tax. Lead eastern India Indirect Tax Practice of Ernst & Young in past.

In our earlier tax alert on Service Tax Notification No. 1/2017; 2/2017 and 3/2017 it had been clarified that 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 appointed in India by the person in charge of the vessel (Shipping Agent).

These changes gave rise to 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.

This amendment created an anomalous situation which gave rise to certain doubts like:

- How to ascertain the value of freight
- What shall be the point of taxation to pay service tax
- Can service tax be collected from the importer?
- Can the importer avail the cenvat credit of such service tax

In order to resolve the here above mentioned queries, the set of notification amendments had been released i.e. 14/2017; 15/2017; 16/2017 and 10/2017 CE NT dated 13/04/2017. These changes introduced in the above notifications shall come into effect from 23/04/2017, except certain changes which are made retrospectively from 22/01/2017.

Point of Taxation:

In the point of taxation Rules, 2011 new **Rule 8B** has been inserted by virtue of Notification¹. This amendment has been made **with retrospective effect from 22.01.2017**.

Accordingly , the point of taxation in respect of service provided by foreign consignor who himself engages the foreign shipping line to transportation of goods by a vessel from a place outside India upto the custom station of clearance in India, shall be **the date of bill of lading of such vessel at the port of export**.

Person liable to pay tax:

The person liable for payment of service tax has been **changed from the person filing import manifest to the importer**.

As per the earlier Notification² which laid down that the person liable to pay service tax in relation to service provided or agreed to be provided by a person located in non taxable territory to a person located in non taxable territory by way of transportation of goods by a vessel from a place outside India upto the customs station of clearance in India, shall be the person in charge of the vessel or aircraft carrying imported goods upto the custom station in India.

By the virtue of the recent Notification³ in such situation the **person liable to pay service tax shall be the importer** of such goods.

Value of tax to be paid:

Where the exact amount of freight paid by the foreign exporter to the foreign shipping line is not known, then as per the Notification⁴ the service tax shall be paid at 1.4% of the total value of imported goods along with the Cess on the same.

Cenvat credit availability:

As per the Notification⁵ the definition of the input services has been amended and accordingly the importer liable to pay service tax in the given circumstances has been enabled to avail cenvat credit of service tax so paid on the basis of challan evidencing payment of service tax.

¹Notification No. 14/2017- S.T dated 13/04/2017

²Notification No. 02/2017 dated 22/01/2017

³Notification No. 15/2017 and 16/2017 w.e.f 23/04/2017

⁴Notification no. 16/2017 dated 13/04/2017

⁵Notification no. 10/2017 CE NT w.e.f 23/04/2017

