

## **Importer liable to pay IGST on RCM basis on ocean freight even if such freight is part of CIF value of imported goods**

AAR – Madhya Pradesh has recently given a ruling on validity of levy of IGST on reverse charge basis on ocean freight even if the same is a part of consolidated price of goods imported on CIF basis. We shall have a look at the case and the impact it brings to large class of tax payers.

### **Facts of the case:**

The applicant was engaged in the manufacturing of various edible oils. The applicant intended to import crude soya bean oil on CNF (Cost plus Freight) or CIF (Cost + Insurance + Freight) basis which included the component of ocean freight into the price of imported goods. Under these circumstances, the applicant was required to authorize the seller who was a person located in non-taxable territory for transporting the above goods by a vessel from supplier's place up to the place in Indian Customs station. The seller collected the ocean freight in the price of goods from the buyer i.e. applicant.

Ocean freight would not be paid by the applicant because the seller was supposed to collect freight while deciding the price of the goods payable by the applicant. The payment of ocean freight would be made by the seller located outside India.

As per corrigendum issued on 30-6-2017 to the notification No. 8/2017-Integrated Tax (Rate), dated 28-6-2017, the importer of the goods was required to pay GST on Reverse Charge Mechanism on the amount of deemed ocean freight equal to 10 per cent of the value of goods imported.

### **Questions before AAR:**

Whether the applicant/importer is again required to pay IGST on the component of ocean freight under RCM mechanism on deemed amount which will amount to double taxation of IGST on the deemed component of ocean freight of the imported goods?

### **Discussion and findings:**

As per *Notification 10/2017-Integrated Tax (Rate), dtd.28.06.2017*, [Sr.No.10], the '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' have been put under Reverse Charge Mechanism and the recipient of service viz. 'Importer, as defined in clause (26) of Section 2 of the Customs Act, 1962 (52 of 1962), located in the taxable territory'.

In terms of *Notification No.8/2017-Integrated Tax (Rate), dtd.28.06.2017*, read with Corrigendum dtd.30.06.2017, the taxable value in respect of ocean freight has been defined as, 'Where the value of taxable service 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 up to the customs station of clearance in India is not available with the person liable for paying integrated tax, the same shall be deemed to 10% of the CIF value (sum of cost, insurance and freight) of imported goods.'

In view of the above two notifications there is no any ambiguity, whatsoever, regarding payment of IGST on ocean freight. As per existing law, IGST on ocean freight has to be paid by the importer under reverse charge mechanism, irrespective of the fact that such freight charges are included in the intrinsic CIF value.

As construed, the applicant has broadly challenged the validity of levy of IGST on ocean freight under RCM. It is observed that any question relating to constitutional validity of the Notifications issued is not within the ambit of

the jurisdiction of AAR. Nevertheless, it is pertinent to mention here that the Notifications are issued on the basis of the recommendations of the GST Council, and the GST Council in turn is empowered by the provisions of Article 279A(4) of the Constitution of India inserted vide the Constitution (One Hundred and First Amendment Act, 2016, to make recommendations to the Union and States on—

- a. The taxes, cesses and surcharges levied by the Union, the States and the local bodies, which may be subsumed in the goods and services tax;
- b. model goods and services tax laws, principles of levy, apportionment of goods and services tax levied on supplies in the course of inter State trade or commerce under Article 269A and the principles that govern the place of supply;
- c. any other matter relating to the Goods and Services tax as the Council may decide

**Ruling:**

The Applicant shall be liable to pay IGST on ocean freight paid on imported goods under Reverse Charge Mechanism in terms of Notification No.10/2017-IT(R) and Notification No.8/2017-IT(R) irrespective of the ocean freight component having been a part of the CIF value of imported goods.

***Our Comments:***

*The taxability of ocean freight has been a subject matter of dispute for quite some time now. There are large number of tax payers who imports goods on CIF basis and are affected by this provision and judgement. The issue has reached before judicial authorities earlier also and pending for conclusion at higher authorities.*

*In one of the plea raised by Mumbai-based importer Victory Ventures, challenges the June 2017 notification before Bombay High Court which has agreed to hear the petition.*

*Gujarat High Court has also stayed the levy of IGST on ocean freight by petitioner "Mohit Minerals Pvt Ltd" challenging vires of IGST related notification. The petition has principally three elements. First, having paid the tax under IGST Act on the entire value of imports (inclusive of the ocean freight), the petitioner cannot be asked to pay tax on the ocean freight all over again under a different notification. Secondly, in case of CIF (Cost, Insurance and Freight) contracts, the service provider and service recipient both are outside the territory of India. No tax on such service can be collected even on reverse charge mechanism. And thirdly, in case of High Sea sales, the burden is cast on the petitioner as an importer whereas, the petitioner is not the recipient of the service at all. It is the petitioner's seller of goods on high sea basis who has received the services from the exporter/ transporter. The matter is still pending.*

*A similar petition was filed by Ghanshyamlal and Company. The court took notice of order passed in the previous matter and granted stay.*

*There are couples of petitions lying at higher authorities of law to decide.*

*In such a case, the ruling of AAR does not seem to be consistent with the commercial and judicial principles. We need to wait for the ruling of the High Courts and their interpretation to come at a concrete stand.*

- Sujit Sah

Please feel free to contact us at [contact@xactitude.in](mailto:contact@xactitude.in) for any further queries.