IMPORT OF GOODS - END OF DOUBLE TAXATION ON OCEAN FREIGHT

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The freight paid to the shipping companies for the transportation ofexport goods and imported goods through Sea is called "oceanfreight". The levy of tax on Ocean freight is the legacy of tax statute which has been continued in the GST regime. The Ocean freight paid on transportation of goods by sea was a taxable service leviable to Service Tax with effect from 1st March 2016.

Meaning of double taxation:

Levy of tax twice on the similar item is called as double taxation. Once ocean freight is subjectedto levy of IGST on goods imported into India and once again IGST is liable on ocean freight on import of services i.e. freight forwarding services provided by the supplier of imported goods interm of CIF basis of supply is amounts to double taxation.

Meaning of Imported goods

Section 2(10) of the IGST Act,2017 defines "Import of goods "with its grammatical variations and cognate expressions, means bringing goods into India from a place outside India.

The term 'brining goods' in to India means 'physically' goods should be brought into India and "import of goods "commences when the goods cross the Customs frontiers of India, it may be land, air and territorial waters of India. Thus "import of goods' necessarily implies goods to be brought physically in India.

Levy of tax on imported goods:

Any goods imported into India are chargeable to duties of Customs under Section 12 of the Customs Act, 1962 at rates specified in the Customs Tariff Act, 1975.

As per Section 5(1) of the IGST Act, 2017, Integrated tax on goods imported into India shall be levied and collected in accordance with the provisions of Section 3 of the Customs Tariff Act, 1975 on the value as determined under the said

Act at the point when duties of customs are levied on the said goods under Section 12 of the Customs Act, 1962.

And as per Section 14 of the Customs Act, 1962, the value of the imported goods shall be the transaction value of such goods for the purpose of levy of Customs duty and such transaction value in the case of imported goods shall include, in addition to price , any amount paid or payable for costs and services, including commissions and brokerage , engineering, design work, royalties and licence fees, costs of transportation to the place of importation, insurance, loading , unloading and handling charges to the extent as per Rule 10(2) of the Customs valuation (Determination of Value of Imported Goods) Rules, 2007.

Rule 10(2) of the Customs valuation (Determination of Value of Imported Goods) Rules, 2007, prescribed that the value of the imported goods shall be the value of such goods, for delivery at the time and place of importation and shall include (a) the cost of transport of the imported goods to the place of importation.

Provided that where the cost of transport is not ascertainable, such cost shall be 20% of the FOB value or CIF value as the case may be. Further, goods imported by sea through stuffed container for clearance at ICD or CFS, then transportation cost from port of delivery to ICD/CFSshall not be considered as cost of transportation to arrive transaction value of imported goods.

Meaning of import of Services:

Section 2(11) of the IGST Act, 2017 defines "import of services" means the supply of any service,where-

(i) the supplier of service is located outside of India;

(ii) the recipient of service is located in India; and

(iii) the place of supply of service is in India.

Levy of tax on import of Services:

By virtue of Section 5(3) of the IGST Act, 2017 the Government (onrecommendation of the GST Council) was empowered to issue notification, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and the recipient of such goods or services or both is liable to paytax under reverse charge in relation to the supply of such goods or services or both. By exercising power vested under section 5(3) of the IGST Act,2017, the Government issued Notification No. 10/2017-Integrated Tax (Rate), dated 28-6-2017 and the relevant entry is reproduced as under:

Sl.No.	Category of Supply of Services	Supplier of Service	Recipient of service
(1)	(2)	(3)	(4)
10	Services supplied by a person locatedin 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.	A person located in anon-taxable territory.	Importer, as defined in Sec 2(26) of the Customs Act,1962, located in the taxable territory

The cited table is clearly stated that importer is the recipient of services and section 5(3) of the IGST Act, 2017 empowered to levy a tax on recipient and importer is liable to pay tax on services provided by freight forwarder on import of services (under reverse charge mechanism).

Taxable value of Ocean freight:

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 upto the customs station of clearance in India is not available with the person liable for paying integrated tax, the same shall be deemed to be 10 % of the CIF value (sum of cost, insurance and freight) of imported goods.

Further, Ocean freight is taxable @5% (IGST) under Reverse Charge Mechanism (Services by way of transportation

of goods by a vessel from a place outside India up to the customs station of clearance in India) vide Notification No. 10/2017-Integrated Tax (Rate), dated 28-6-2017 read with Notification No. 8/2017-Integrated Tax (Rate), dated 28-6-2017.

Double Tax on ocean freight:

Ocean freight component suffers tax twice; first instance suffers IGST as component of Customs Duty on imported goods on CIF basis (Cost, insurance and freight) and second time IGST @ 5% in the form of Import of Services (Under Reverse Charge Mechanism) for payment by the importer. Therefore, IGST payment is levied twice on Ocean freight in the guise as part of transaction value of imported goods. Once IGST is levied as element of Customs duty as goods and another case IGST is liable to pay on import of services.

Judgment of the Hon'ble Gujarat High Court on 'Ocean freight'

In the case of M/s Mohit Minerals (P.) Ltd. v. Union of India [2020 (33) G.S.T.L. 321 (Guj.)

The writ-applicant was engaged in importing non-cooking coal from Indonesia, South Africa and U.S.A. and supplying it to various domestic industries including power, steel, etc. The writ-applicant discharged customs duty on the imported products at the time of each import including the value of ocean freight. In addition to the customs duty, it also paid IGST on the imported coal which included the value of the ocean freight.

The writ-applicant challenged the legality and validity of the Notification No.8/2017- Integrated Tax (Rate), and Entry 10 of the Notification No.10/2017-Integrated Tax (Rate), both dated 28.6.2017 being ultra vires to the IGST Act, 2017. As per the submissions of the writ-applicant, IGST was levied again on reverse charge basis under said Notifications on the Ocean Freight,for which IGST was already paid at the time of import under Customs law.

The Hon'ble High Court observed that the writ-applicant was importing goods on the CIF basis where the transportation of goods in a vessel was the obligation of the foreign exporter.

The foreign exporter entered into contract with the foreign shipping line for availing the services of transportation of goods in a vessel. The obligation to pay consideration to foreign shipping line was also of the foreign exporter. The writ-applicant neither availed the services of transportation of goods in a vessel nor was he liable to pay the consideration of such service. Moreover, in a case of CIF contract, the contract for transportation is entered into by the seller, i.e. the foreign exporter, and not the buyer, i.e. the importer, and the importer was not the recipient of the service of transportation of the goods. The entire transaction takes place outside the taxable territory, i.e. outside India. The mere fact that the transportation of goods terminatedin India, will not make such supply of transportation of goods as taking place in India. The abovementioned notifications levying tax on supply of service of transportation of goods by a person in a non-taxable territory to a person in a non-taxable territory from a place outside

India up to the customs station of clearance in India and making the importer liable to pay GST,are ultra vires the provisions of the IGST Act.

The Hon'ble High Court held that no IGST would be levied on the ocean freight for the services provided by a person located in a 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.

Hence, levy and collection of IGST on ocean freight under the said notifications is not permissible in law. The department has filed SLP against the order of Gujarat HC before the Apex Court.

SC upheld Gujarat HC judgment of Mohit Minerals' wherein GST on Ocean freight was held as ultra vires:

On 19/05/2022, the Hon'ble Supreme Court has pronounced a land mark decision on 'Ocean freight' in Civil Appeal 1390 of 2022 in the case of Union of India & Anr vs. M/s Mohit Minerals (P.) Ltd, [2022(61) G.S.T.L.257(SC), while upholding the judgment of the Gujarat High Court taken on the levy of IGST on the Ocean Freight Component on import under the CIF method on a reverse charge basis.

The Apex Court has observed that the ocean freight from foreign location to customs station in India in CIF import contracts has sufficient territorial nexus for levying IGST under reverse charge. On an interpretation of Sections 5(3) and 5(4)

of the IGST Act, read with Section 2(93) of the CGST Act, it is clear that the importer can be classified as the 'recipient 'of the services. On this interpretation, the validity of the notifications levying GST under RCM on ocean freight has to be upheld.

The Apex Court held that the impugned levy imposed on the 'reverse' aspect of the transaction is in violation of the principle of 'composite supply' enshrined under Section 2(30) read with Section 8 of the CGST Act. Since the Indian importer is liable to pay IGST on the 'composite supply', comprising of supply of goods and supply of services of transportation, insurance, etc., in a CIF contract, a separate levy on the Indian importer for the 'supply of services' by the shipping line would be in violation of Section 8 of the CGST Act

In view of the above, it was held that the impugned notifications are validily issued under Sections 5(3) and 5(4) of the IGST Act, but it would be in violation of Section 8 of the CGST Act.

Thus, held that "having paid the IGST on the amount of freight which is included in the value of the imported goods, the impugned notifications levying tax again as a supply of service, without any express sanction by the statute, are illegal and liable to be struck down."

Before parting .....

Thus, the litigation of levy of double taxation of ocean freight on imported goods CIF basis and vires of Notifications have been challenged before the various High Courts across the country. The most awaited final decisions of the supreme court has delivered a land mark decision provided a great relief to the importer and double taxation on ocean freight incurred on imported goods on CIF basis has come to an end. TB