

## **Ocean Freight and Budget Changes.**

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### **Import Transactions:**

The following item is covered in the negative list under Section 66 D of the Finance Act, 1994 and hence not liable to service tax.

- (p) services by way of transportation of goods—
  - (i) by road except the services of—
    - (A) a goods transportation agency; or
    - (B) a courier agency;
  - (ii) by an aircraft or a vessel from a place outside India up to the customs station of clearance in India; or
  - (iii) by inland waterways

Vide clause 146 of the Finance Bill, 2016, the entry (ii) above is proposed to be omitted from 01.06.2016. Hence, from 01.06.2016, services by way of transportation of goods, by an aircraft or a vessel from a place outside India upto the customs station of clearance in India, would be liable to service tax.

Various amendments have been carried out in Notification 25/2012 ST Dt. 20.06.2012 which provides for various exemptions from payment of service tax vide Notification 9/2016 ST DT. 01.03.2016. The following exemption has been introduced with effect from 01.06.2016.

53. Services by way of transportation of goods by an aircraft from a place outside India upto the customs station of clearance in India.

It may be noted from the above that air freight paid for transport of goods from a foreign origin to an Indian destination would not be liable to service tax. But ocean freight paid for transport of goods from a foreign origin to an Indian destination would be liable to service tax.

If an Indian importer has availed the services of ocean transport from a transporter based in India, the said transporter would be charging service tax and the transporter is based out of India, the service tax on ocean freight has to be paid by the importer under reverse charge basis.

### **Export Transactions:**

If the services of transporters are availed for transportation from an Indian Port / Airport to a foreign destination, the applicability of service tax has to be

determined with reference to the provisions of the Place of Provision of Service Rules, 2012. As per Rule 10 thereof, the place of provision of services of transportation of goods shall be the destination of the goods. In case of export shipments, as the destination is outside India, the place of provision of service is outside India, no service tax is payable.

If a transporter based in India is charging ocean freight for such export shipment, the Indian exporter would be paying the transporter such freight. But the said service would not amount to export in the hands of the transporter, as invariably, one of the conditions under Rule 6 A of the Service Tax Rules, 1994 i.e. receipt in foreign exchange would not be satisfied in this case. Hence, it will be an exempted service in the hands of the transporter and to this extent, the transporter would not be entitled to any cenvat credit on the input services utilised in providing such service. Further, in respect of the common input services used by him, the rigours of Rule 6 of the Cenvat Credit Rules, 2004 would apply.

But, vide Notification 13/2016 CE NT Dt. 01.03.2016, the following amendments have been made.

In the definition of "exempted service" under Rule 2 (e) of the CCR, 2004, the service by way of transportation of goods by a vessel from customs station of clearance in India to a place outside India, is kept outside the ambit of "exempted service". Further in Rule 6 (7) of the said Rules, which provides for various situations, where the rigours of Rule 6 would not apply, the following has been added.

"or when a service is provided or agreed to be provided by way of transportation of goods by a vessel from customs station of clearance in India to a place outside India".

The effect of the above amendments can be explained with the following examples.

S.No	Situation	Consequence
1	M/s ABC Logistics, based at	M/s ABC Shall charge Service Tax

	Chennai are charging their Indian Customer for ocean freight from Liverpool to Chennai port.	on ocean freight.
2	M/s XYX Logistics based out of Singapore are raising their invoice on an Indian Importer for ocean freight from Singapore Port to Chennai.	The Indian Importer shall pay service tax on ocean freight under reverse charge.
3	M/s ABC Logistics, based at Chennai are charging their Indian Customer for ocean freight from Chennai port to Liverpool Port.	No service tax is payable.
4	M/s XYX Logistics based out of Singapore are raising their invoice on an Indian Exporter for Ocean freight from to Chennai port to Singapore Port.	No service tax is payable.
5	M/s ABC Logistics, based at Chennai are availing cenvat credit on various common services, like telephone, Chartered Accountant services, security services, etc.	They need not reverse any credit and such credit can be used for paying service tax under (1) above.